

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.: _____**

Tara McCarthy,

Plaintiff,

v.

National Enterprise Systems, Inc. and
David Cutler,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.

PARTIES

4. Plaintiff Tara McCarthy is a natural person who resides in the City of Little Canada, County of Ramsey, State of Minnesota, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant National Enterprise Systems, Inc. (hereinafter “Defendant NES”) is a foreign corporation and a collection agency operating from an address of 29125 Solon Road, Solon, Ohio 44139-3442 and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).
6. Defendant David Cutler (hereinafter “Defendant Cutler”) is a natural person who was employed at all times relevant herein by Defendant NES as a collection agent and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), but whose true name is not yet known.

FACTUAL ALLEGATIONS

7. On or before June 2009, Plaintiff incurred a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5), namely, a personal bank credit card account.
8. The debt was consigned, placed or otherwise transferred to Defendants for collection from Plaintiff.

Collection Call on July 9, 2009

9. On or about July 9, 2009, Defendant NES’s collector, Defendant Cutler, contacted Plaintiff by telephone in an effort to collect this debt, which was a “communication” in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

10. During this call, Defendant Cutler left a phone message for Plaintiff at her place of employment wherein he stated to that he was calling “regarding a pending legal action” and that he needed to speak to her immediately.
11. Defendant Cutler failed to provide Plaintiff with the notices required by 15 U.S.C. §§ 1692e(11).
12. Plaintiff became extremely upset and felt threatened and harassed by Defendant Cutler.
13. Despite such statement by Defendant Cutler, no such legal action has ever taken place on this debt.
14. This collection call on this occasion was a communication in violation of numerous and multiple provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692d, 1692d(2), 1692e, 1692e(2), 1692e(4), 1692e(5), 1692e(9), 1692e(10), 1692e(11), 1692f, and 1692f(1), amongst others.

Summary

15. All of the above-described illegal collection communications of harassing Plaintiff in an effort to collect this debt by Defendant Cutler were made in violation of numerous and multiple provisions of the FDCPA, including but not limited to all of the above cited provisions of the FDCPA, amongst others.

Respondeat Superior Liability

16. The acts and omissions of Defendant Cutler, employed as an agent of Defendant NES and who communicated with Plaintiff as further described herein, were committed within the time and space limits of his agency relationship with his principal, Defendant NES.
17. The acts and omissions by Defendant Cutler were incidental to, or of the same general nature as, the responsibilities agents were authorized to perform by Defendant NES in collecting consumer debts.
18. By committing these acts and omissions against Plaintiff, Defendant Cutler was motivated to benefit his principal, Defendant NES.
19. Defendant NES is therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors, and omissions done in violation of state and federal law by its collection employees, including but not limited to violations of the FDCPA and Minnesota law, in its attempts to collect this debt from Plaintiff.

TRIAL BY JURY

20. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
22. The foregoing acts and omissions of each and every Defendant and their agents constitute numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with respect to the Plaintiff.
23. As a result of each and every Defendant's violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3), from each and every Defendant herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against each and every Defendant:

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and every Defendant and for Plaintiff;
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against each and every Defendant and for Plaintiff;
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against each and every Defendant and for Plaintiff;
- for such other and further relief as may be just and proper.

Dated: April 1, 2010

Respectfully submitted,

BARRY & SLADE, LLC

By: **s/Peter F. Barry**

Peter F. Barry, Esq.

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ATTORNEYS FOR PLAINTIFF

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Plaintiff Tara McCarthy, having first been duly sworn and upon oath, deposes and says as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.


Tara McCarthy

Subscribed and sworn to before me
this day, June 10, 2010.

Notary Public

